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# Supreme Court of the United States

October Term, 1964

No. 294

ONE 1964 PLYMOUTH SEDAN,

*Petitioner,*

COMMONWEALTH OF PENNSYLVANIA,

*Respondent.*

PETITION FOR A WRIT OF HABEAS CORPUS TO THE  
SUPREME COURT OF PENNSYLVANIA.

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IN THE  
**Supreme Court of the United States.**

—  
OCTOBER TERM, 1964.  
—

No.           

ONE 1958 PLYMOUTH SEDAN,

*Petitioner*

v.

COMMONWEALTH OF PENNSYLVANIA,

*Respondent.*

—  
**PETITION FOR A WRIT OF CERTIORARI TO THE  
SUPREME COURT OF PENNSYLVANIA.**

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Pennsylvania, entered in the above entitled case on April 21, 1964.

**CITATION TO OPINIONS BELOW.**

The opinion of the Court of Quarter Sessions of Philadelphia County (R. 20a) <sup>1</sup> is unreported. The majority and dissenting opinions of the Superior Court of Pennsylvania (29a; 35a; 36a) are reported in 199 Pa. Superior Ct. 428, 186 A. 2d 52. The majority and concurring opinions of the Supreme Court of Pennsylvania (App. 2a, 8a) <sup>2</sup> are as yet unreported.

**JURISDICTION.**

The judgment of the Supreme Court of Pennsylvania was entered on April 21, 1964 (App. 1a). A timely petition for reargument was denied on June 30, 1964 (App. 9a). The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

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1. "R." references are to the Record printed for the Supreme Court of Pennsylvania, nine copies of which have been filed with this Petition.

2. "App." references are to the Appendix to this Petition.

**QUESTIONS PRESENTED.**

1. Is evidence which has been obtained by an unreasonable search and seizure and thus must be excluded in a criminal case likewise to be excluded in a proceeding by a state to forfeit an automobile allegedly used in the transportation of untaxed liquor?

2. Are agents of a state permitted to stop and search automobiles and travelers at state borders, without a warrant and without probable cause, to ascertain whether such travelers are bringing property into the state upon which a state tax is due?

3. May state officers, acting without a search or body warrant, stop and search an automobile solely on the ground that the automobile is riding low in the rear?

**CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.**

The Fourth Amendment to the Constitution of the United States provides:

"The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

The Fourteenth Amendment to the Constitution of the United States provides in pertinent part:

"Section 1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; . . ."



The Pennsylvania Liquor Code provides in pertinent part:

"§ 2-209. Officers and investigators of the board to be peace officers; powers

. . . [O]fficers and investigators shall have power and authority, upon reasonable and probable cause, to search for and to seize without warrant or process, except in private homes, any liquor . . . unlawfully . . . imported or transported, and any . . . vehicles . . . which are or have been used in the unlawful . . . importation or transportation of the same. Such liquor . . . or . . . vehicles . . . so seized shall be disposed of as hereinafter provided." 1951, April 12, P. L. 90, art. II, § 209, PA. STAT. ANN. tit. 47, § 2-209.

"§ 6-601. Forfeiture of property illegally possessed or used

No property rights shall exist in any liquor . . . illegally manufactured or possessed, or in any . . . vehicle . . . used in the illegal manufacture or illegal transportation of liquor . . . and the same shall be deemed contraband and proceedings for its forfeiture to the Commonwealth may, at the discretion of the board, be instituted. . . . No such property when in the custody of the law shall be seized or taken therefrom on any writ of replevin or like process." 1951, April 12, P. L. 90, art. VI, § 601, as amended, 1956, April 20, P. L. (1955) 1508, § 1, PA. STAT. ANN. tit. 47, § 6-601 (Supp.).

**STATEMENT OF THE CASE.**

On January 23, 1961, the Commonwealth of Pennsylvania filed a petition in the Court of Quarter Sessions of Philadelphia County alleging that it had seized a 1958 Plymouth sedan automobile in the possession of George McGonigle and that the automobile had been used in violations of the Pennsylvania Liquor Code. The petition prayed that the court adjudge the automobile forfeited to the Commonwealth of Pennsylvania (R. 2a). A hearing was held on July 18, 1961, which was directed to the circumstances under which the automobile was stopped and searched. The testimony revealed that two enforcement officers of the Pennsylvania Liquor Control Board, who had no search or body warrant (R. 8a), followed the automobile across the bridge from Camden, New Jersey, to Philadelphia, Pennsylvania, and halted it a short distance within Philadelphia (R. 6a). A search into the rear and trunk of the automobile turned up 375 bottles of known brand liquor which did not contain Pennsylvania tax seals (R. 6a, 7a). Neither officer had seen this automobile or McGonigle prior to this occasion (R. 8a, 10a). Officer Reitman testified that his only reason for following and stopping the automobile was that it was quite low in the rear and that all he acted on was a suspicion (R. 8a). Officer Snyder testified that his testimony was the same as Reitman's (R. 9a-10a), with the addition that he had reason to believe that a late model, black, four-door sedan Plymouth was delivering liquor illegally into Pennsylvania from South Jersey (R. 10a). However, the trial judge, observing that there was no testimony that the automobile in question was a four-door, black, Plymouth sedan, rejected Snyder's additional testimony as a basis for probable cause (R. 23a, 27a).

At the conclusion of the hearing an oral application was made to dismiss the petition on the basis that the

Commonwealth's evidence was obtained as a result of an unreasonable search and seizure prohibited by the Fourth and Fourteenth Amendments (R. 13a). Specifically, it was contended that the officers of the Liquor Control Board, who had no search or body warrant, did not have probable cause to stop the automobile in which they found the liquor (R. 11a-14a). The trial judge made a specific finding of fact that the officers' sole basis for stopping the automobile was that it was low in the rear (R. 26a-27a). He concluded that the seizure was illegal and that the evidence flowing therefrom should have been excluded under *Mapp v. Ohio*, 367 U. S. 643 (R. 27a-28a). Accordingly, the Petition for Forfeiture was dismissed (R. 19a):

The Commonwealth appealed to the Superior Court of Pennsylvania which, by a 4-3 decision, reversed the order dismissing the petition. The Superior Court made no specific determination that the officers had probable cause to stop the automobile and search therein, but rather based its decision on the following principle:

"A state should have the right to stop a traveler coming into the state and to search his belongings to ascertain whether he is bringing into the state any property upon which a state tax is due. The Commonwealth of Pennsylvania has a sales tax, a liquor tax and a cigarette tax, and if its officers may not stop vehicles coming into the state to ascertain whether its laws are being violated, law enforcement will be greatly impeded." (R. 32a)

The two dissenting opinions asserted that the Constitution of the United States does not permit travelers to be indiscriminately stopped at state borders without cause or reason (R. 35a, 37a-39a).

Your petitioner thereupon applied to the Supreme Court of Pennsylvania to allow an appeal from the judgment of the Superior Court (R. 41a). The petition specifi-



cally raised the Fourth Amendment question of the reasonableness of the search and seizure and also the question of whether the Superior Court's disposition of the case denied liberty of travel without due process of law (R. 52a). The Supreme Court allowed the appeal (R. 53a) and permitted the Superior Court judgment to stand (App. 1a). In affirming, the Supreme Court held that it need not reach the question of the validity of the search and seizure since, in its opinion, the federal constitutional guarantees relating to unlawful searches, arrests and seizures in criminal proceedings were not applicable in a forfeiture proceeding (App. 2a, 4a). One Justice wrote a concurring opinion dealing with certain procedural aspects of forfeiture proceedings (App. 8a) and Justice Musmanno dissented without opinion (App. 7a). A timely petition for reargument was denied (App. 9a).

**REASONS FOR GRANTING THE WRIT.**

1. The decision of the Pennsylvania Supreme Court that illegally obtained evidence is admissible in a forfeiture proceeding is based substantially upon the authority of the Third Circuit Court of Appeals in *United States v. \$1,058.00 in United States Currency*, 323 F. 2d 211 (3rd Cir. 1963). The latter decision is in direct conflict with the recent Seventh Circuit Court of Appeals' decision in *United States v. \$5,608.30 in United States Coin and Currency*, 326 F. 2d 359 (7th Cir. 1964). The Third Circuit said in *\$1,058.00*:

"The sum of Jeffers and Trupiano is that the body of law relating to unlawful searches, arrests and seizures in criminal proceedings is without impact in a libel for forfeiture action which is an *in rem* proceeding." 323 F. 2d at 213.

The Seventh Circuit said in *\$5,608.30*:

"We hold that in view of the broad language of the Fourth Amendment coupled with the quasi-criminal nature of the forfeiture proceeding, the District Court should have considered and ruled upon the motion to suppress in this forfeiture proceeding." 326 F. 2d at 362.

The conflict amongst the federal circuits on the question which your petitioner raises was specifically noted in *United States v. One 1963 Cadillac Hardtop*, 220 F. Supp. 841 (E. D. Wisc. 1963), wherein the Court stated:

"The issue presently before the court is whether a motion to suppress evidence is proper in a civil libel proceeding. There is a definite conflict in the decisions of the various Circuit Courts of Appeal." 220 F. Supp. at 842.

Besides the conflict between the Third and Seventh Circuits, further confusion is cast on the question by the decisions of the Fourth, Fifth and Sixth Circuits on the one hand, and the First, Second and Tenth Circuits on the other hand. Thus, the Fourth Circuit said in *United States v. One 1956 Ford Tudor Sedan*, 253 F. 2d 725, 727 (4th Cir. 1958):

"Considerations which, in criminal cases, require the suppression of evidence obtained in an unlawful search and seizure have no application here [in a forfeiture proceeding] . . . . We deem it unnecessary to extend, beyond the suppression of evidence in the criminal jurisdiction, the overlordship of the conduct of federal law enforcement officers",

whereas the Tenth Circuit held in *United States v. Butler*, 156 F. 2d 897, 899 (10th Cir. 1946):

"The evidence obtained in connection with the unlawful search and seizure excluded, there was no proof on which to predicate a conviction in the criminal case or a forfeiture in the action for libel."

The Fifth Circuit noted in *United States v. Carey*, 272 F. 2d 492, 494-495 (5th Cir. 1959):

"This Court has held on various occasions that the illegality of a search and seizure does not affect libel of information for forfeiture",

whereas the Second Circuit held in *United States v. Physic*, 175 F. 2d 338, 339 (2nd Cir. 1949):

"Accordingly, the judgment cannot stand since, except for the fruit of the [illegal] search, the record is lacking in any evidence to support the forfeiture."

The Sixth Circuit's decision in *Bourke v. United States*, 44 F. 2d 371 (6th Cir. 1930), is considered to be in line with

the philosophy of the Third, Fourth and Fifth Circuits (see e.g., *United States v. \$1,058.00 in United States Currency*, 323 F. 2d 211, 213), whereas the First Circuit in *Rogers v. United States*, 97 F. 2d 691, 692 (1st Cir. 1938), a civil suit by the government to collect customs duties on smuggled property, held:

“[W]e think that a judgment in a civil cause, in the procurement of which evidence thus illegally obtained is used, is . . . rendered invalid.”

Significantly, Mr. Justice Goldberg, concurring in *Cleary v. Rolger*, 371 U. S. 392, 403 (1963), noted that the effect of the Fourth Amendment in civil cases in the federal courts is not totally settled, citing *Rogers v. United States*, *supra*, *United States v. Butler*, *supra*, *United States v. Physic*, *supra* and *United States v. One 1956 Ford Tudor Sedan*, *supra*. That issue is now specifically raised by the instant record. Even though this case comes from the Supreme Court of Pennsylvania, the federal circuit conflict should now be settled because, under *Ker v. California*, 374 U. S. 23, the state courts must look to federal law in handling the application of the Fourth Amendment through the Fourteenth Amendment.

2. The decision of the court below, as well as those Circuit Court decisions holding that the Fourth Amendment has no bearing in forfeiture proceedings, is believed to be erroneous because of misplaced reliance on Your Honorable Court's decisions in *United States v. One Ford Coupe*, 272 U. S. 321, and *Dodge v. United States*, 272 U. S. 530. Both *One Ford*, *supra*, and *Dodge*, *supra*, dealt with the validity of seizures made by officers who had no statutory authority to do so. In *One Ford*, the validity of a seizure was not impaired although made by the prohibition director rather than an internal revenue officer. In *Dodge*, the validity of a seizure was not impaired although made by a police officer of the City of Providence, Rhode Island,

rather than the officers designated in section 26 of the National Prohibition Act. Neither *One Ford* nor *Dodge* was concerned with the use of evidence, seized illegally by Fourth Amendment standards, to prove that property is subject to forfeiture.

Moreover, the decision below and the other decisions questioned conflict with Your Honorable Court's decision in *Boyd v. United States*, 116 U. S. 616, a forfeiture proceeding wherein it is stated:

"As, therefore, suits for penalties and forfeitures incurred by the commission of offenses against the law, are of this quasi-criminal nature, we think that they are within the reason of criminal proceedings for all purposes of the Fourth Amendment of the Constitution. . . ."

3. The effect of the judgment of the Pennsylvania Supreme Court, affirming the judgment of the Pennsylvania Superior Court, is to establish a principle that a traveler may be arbitrarily stopped at a state border, without cause or reason to do so, and that he and his automobile may be searched to ascertain if he is bringing taxable property into the state. This is in direct conflict with Your Honorable Court's decision in *Carroll v. United States*, 267 U. S. 132. In determining under what circumstances an automobile may be stopped and searched without a warrant, Mr. Chief Justice Taft said:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding liquor, and thus subject all persons lawfully using the highway to the inconvenience and indignity of such a search . . . . [T]hose lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official,



authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise." 267 U. S. at 153-154.

4. The issues presented by this petition are of extreme public importance. Provisions for forfeiture of property used to violate federal and state revenue laws are common, and the question of the Fourth and Fourteenth Amendments' applicability will undoubtedly arise in future forfeiture cases. Moreover, under the law of the instant case, thousands of travelers entering Pennsylvania are subject to state border searches reminiscent of the toll gates of the villages of medieval Europe. Travelers who enter Pennsylvania are being treated as if they were going from country to country in other parts of the world.

### **CONCLUSION.**

For the foregoing reasons, it is respectfully submitted that this Court should grant a writ of certiorari to settle the important question of whether the citizens of this country are entitled to the protections of the Fourth and Fourteenth Amendments when the government attempts to confiscate their private property. The writ should also be granted to restrain the Commonwealth of Pennsylvania's asserted right to make border searches without probable cause to believe that the law is or has been violated.

Respectfully submitted,

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**Appendix.**

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**JUDGMENT OF THE SUPREME COURT OF  
PENNSYLVANIA.**

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**COMMONWEALTH OF PENNSYLVANIA**

**v.**

**ONE 1958 PLYMOUTH SEDAN, IN POSSESSION  
OF MCGONIGLE,**

***Appellant.***

---

**Appeal From Judgment of the Superior Court of  
Pennsylvania, No. 14, October Term, 1962.**

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**Argued; January 17, 1964**

**JUDGMENT AFFIRMED.**

**JONES, J.**

**Filed: 4-21-64**

**Mr. Justice Roberts filed a concurring opinion,**

**Mr. Justice Musmanno dissents.**

**(1a)**

**OPINION OF THE SUPREME COURT  
OF PENNSYLVANIA.**

Filed: April 21, 1964.

JONES, J.

At approximately 6:30 A. M. on December 16, 1960, two officers of the Pennsylvania Liquor Control Board, stationed near the approach to the Benjamin Franklin bridge in New Jersey, observed a 1958 Plymouth sedan bearing Pennsylvania license plates proceeding toward the bridge in the direction of Philadelphia. Noting that "the car was low in the rear, quite low", the officers followed the automobile across the bridge into Philadelphia where they stopped and searched the automobile without first having obtained either a body or a search warrant. Their search revealed that the rear seat and the back-rest of the automobile had been removed and that the rear and trunk of the automobile contained 375 bottles of whiskey and wine none of which bore Pennsylvania tax seals.

Both the car and alcoholic beverages were seized. The Commonwealth instituted proceedings for the forfeiture of the automobile in the Court of Quarter Sessions of Philadelphia County. That court dismissed the forfeiture proceedings on the ground that the seizure of the automobile "was founded upon evidence illegally obtained", i.e., without a warrant and without probable cause. The Superior Court reversed, three judges dissenting, and we granted an allocatur.

The thrust of the arguments, both of the appellant and the Commonwealth, is directed to the validity and propriety of the search and the subsequent seizure by the officers of this Plymouth automobile. In our view, such arguments are beyond the point. By reason of the nature of the present proceeding, i.e., a forfeiture procedure, we consider it unnecessary to determine the propriety and validity of the search and the seizure of this automobile.

This proceeding was instituted under the Act of April 12, 1951, P. L. 90, art. VI, § 601, as amended by the Act of April 20, 1956, P. L. (1955) 1508, § 1, 47 P. S. § 6-601, which provides: "No property rights shall exist in any . . . vehicle . . . used in the illegal transportation of liquor, alcohol or malt or brewed beverages, and the same shall be deemed *contraband* and proceedings for its forfeiture to the Commonwealth may, at the discretion of the board,<sup>1</sup> be instituted in the manner hereinafter provided. No such property when in the custody of the law shall be seized or taken therefrom on any writ of replevin or like process." (Emphasis supplied.) This proceeding is not a criminal proceeding (*Commonwealth v. One 1927 Graham Truck*, 165 Pa. Superior Ct. 1, 67 A. 2d 655; *Commonwealth v. One 1939 Cadillac Sedan*, supra) but a civil proceeding in rem (*Commonwealth v. One Five-Passenger Overland Sedan*, 90 Pa. Superior Ct. 376) and is directed to the confiscation of the property itself on the theory that the property is the offender.

The statute, upon which this proceeding is based, mandates that no property rights shall exist in an automobile used in the illegal transportation of liquor and declares an automobile engaged in such use shall be deemed to be con-

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1. Prior to the 1956 amendment, the forfeiture of an automobile used in the illegal transportation of liquor was mandatory: *Commonwealth v. One 1939 Cadillac Sedan, et al.*, 158 Pa. Superior Ct. 392, 45 A. 2d 406; *Commonwealth v. One Dodge Sedan*, 141 Pa. Superior Ct. 34, 14 A. 2d 600. The 1956 amendment deleted from Section 601 of the 1951 Act the phrase "shall be forfeited to the Commonwealth" and inserted, in lieu thereof, the phrase "and proceedings for its forfeiture to the Commonwealth may, at the discretion of the board, be instituted. . . ." It has been held that, as a result of this amendment, the Board has discretion to *institute* forfeiture proceedings and the courts have discretion as to whether forfeiture shall be decreed even though illegal use of the automobile has been established: *Commonwealth v. One 1957 Chevrolet Sedan, et al.*, 191 Pa. Superior Ct. 179, 155 A. 2d 438; *Commonwealth v. One 1958 Oldsmobile Sedan*, 194 Pa. Superior Ct. 352, 355, 356, 168 A. 2d 776; *Commonwealth v. One 1959 Chevrolet Impala Coupe*, 201 Pa. Superior Ct. 145, 191 A. 2d 717.

traband. Articles of contraband are things and objects outlawed and subject to forfeiture and destruction upon seizure: 17 C. J. S. 510. "It is the use to which the property is put that renders property, otherwise lawful, rightful to have, use and possess, subject to seizure and forfeiture": *Hemenway & Moser Co. et al., v. Funk, et al.*, 100 Utah 72, 106 P. 2d 779. The purpose for which the thing or article is used acts as the criterion for the classification of such thing or article as contraband or non-contraband.

The court below refused to decree a forfeiture in the instant case because, inferentially at least, it believed that the rule of exclusion of evidence illegally obtained applied to this proceeding, even though not a criminal proceeding. In this respect the court erred.

In *United States v. One Ford Coupe*, 272 U. S. 321, 47 S. Ct. 154, almost forty years ago the U. S. Supreme Court, speaking through Mr. Justice Brandeis, recognized that an illegal or unauthorized seizure of an automobile did not preclude the possibility of a forfeiture proceeding: "It is settled that where property declared by a federal statute to be forfeited because used in violation of federal laws is seized by one having no authority to do so, the United States may adopt the seizure with the same effect as if it had originally been made by one duly authorized." (272 U. S. at p. 325, 47 S. Ct. at p. 155).<sup>2</sup>

Very recently, the U. S. Court of Appeals for the Third Circuit in *U. S. v. \$1,058.00 in United States Currency*, 323 F. 2d 211, held that contraband, even though unlawfully seized, may nevertheless be forfeited. The Court stated: "The doctrine of *One Ford Coupe* [supra] has been applied by the circuits in *Interbartolo v. United States*, 303 F. 2d 34, 38 (1 Cir., 1962); *United States v. Carey*, 272 F. 2d 492, 494-495, (5 Cir., 1959); *United States v. One 1956 Ford Tudor Sedan*, 253 F. 2d 725, 726, 727 (4 Cir., 1958); *United*

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2. In *Dodge et al. v. U. S.*, 272 U. S. 530, 532, 47 S. Ct. 191, 192, the Court, speaking through Mr. Justice Holmes, recognized the same rule.



States v. Pacific Finance Corp., 110 F. 2d 732 (2 Cir., 1940); Bourke v. United States, 44 F. 2d 371 (6 Cir., 1930).

"In United States v. Jeffers, 342 U. S. 48, 72 S. Ct. 93, 96 L. Ed. 59 (1951), and Trupiano v. United States, 334 U. S. 699, 68 S. Ct. 1229, 92 L. Ed. 1663 (1948), where it was held that property illegally seized could not be used as evidence in a criminal proceeding, it was noted that such property could nevertheless be forfeited.

"It was said in Jeffers, 342 U. S. at page 54, 72 S. Ct. at page 96, 96 L. Ed. 59:

*" 'Since the evidence illegally seized was contraband the respondent was not entitled to have it returned to him. It being his property, for the purposes of the exclusionary rule, he was entitled on motion to have it suppressed as evidence on his trial.' (Emphasis supplied.)*

and in Trupiano, 334 U. S. at page 710, 68 S. Ct. at pages 1234-1235, 92 L. Ed. 1663:

*" 'It follows that it was error to refuse petitioners' motion to exclude and suppress the property which was improperly seized. But since this property was contraband, they have no right to have it returned to them.' (Emphasis supplied.)*

"The sum of Jeffers and Trupiano is that the body of law relating to unlawful searches, arrests and seizures in criminal proceedings is without impact in a libel for forfeiture action which is an *in rem* proceeding.

"As was succinctly stated in Grogan v. United States, 261 F. 2d 86, at page 87 (5 Cir., 1958), cert. den. 359 U. S. 944, 79 S. Ct. 725, 3 L. Ed. 2d 677:

*" 'The seizure of property, the title to which has been forfeited by the United States, is to be distinguished from the exclusion of evidence secured through an un-*

lawful search and seizure. In the one case the Government is entitled to the possession of the property, in the other it is not."

In *U. S. v. Carey*, 272 F. 2d 492, 494, 495, where federal agents had noted that an automobile "was sagging in the rear and appeared to be heavily loaded" and had stopped the automobile finding a bottle of moonshine whiskey and 52 gallons of nontaxpaid whiskey in the car, the United States instituted forfeiture proceedings. There in the Court stated: "There is a proper distinction between obtaining evidence for a criminal prosecution and a seizure of forfeited property under Internal Revenue laws" (p. 493) and that "[e]ven if it were assumed that the search and seizure were illegal, that would not defeat the Government's action for forfeiture." (p. 494). In *U. S. v. One 1956 Ford Tudor Sedan*, 253 F. 2d 725, 727, the Court said: "Legal infirmities in the seizure do not impair the right of the United States to condemn or clothe the former owner with property and possessory rights he lost when he used the property in violation of the revenue laws. Considerations which, in criminal cases, require the suppression of evidence obtained in an unlawful search or seizure have no application here. . . . We deem it unnecessary to extend, beyond the suppression of evidence in the criminal jurisdiction, the overlordship of the conduct of federal law enforcement officers." See also: *Martin et al. v. U. S.*, 277 F. 2d 785, 786.

In this Commonwealth our courts have held that an unlawful seizure of contraband will not bar its forfeiture. In *Commonwealth v. Scanlon*, 84 Pa. Superior Ct. 569, 571,

3. We are not unaware of the observation of Mr. Justice Goldberg, concurring in *Cleary v. Bolger*, 371 U. S. 392, 83 S. Ct. 385 (1963), that the effect of the Fourth Amendment in civil cases in the federal courts is not "totally settled" and of the observation of Mr. Justice Brennan, dissenting in *Cleary*, that "it has not yet been settled whether *Mapp* [*Mapp v. Ohio*, 367 U. S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081] applies to administrative proceedings."

572, Judge (later President Judge) Keller stated: "If intoxicating liquor, unlawfully possessed, is found on a man's premises and comes into possession of the Commonwealth, the law of this State does not require it to be returned to his criminal possession even though custody of it was obtained by an illegal search [citing cases]. . . . This is on the principle that, if the possession is unlawful, the liquor is forfeited to the Commonwealth, and no property right can exist in favor of an individual to such forfeited or contraband property." See also: *Commonwealth v. Davis*, 163 Pa. Superior Ct. 224, 60 A. 2d 552; *Commonwealth v. Hunsinger*, 89 Pa. Superior Ct. 238, 242; *Commonwealth v. One Box Benedictine, etc.*, 89 Pa. Superior Ct. 467, aff'd 290 Pa. 121.

The legislature has seen fit to declare the non-existence of property rights in any automobile used in the illegal transportation of liquor and that such an automobile is contraband. Under the decisional law of both federal and state courts, *supra*, we are satisfied that, even if the instant automobile had been illegally seized, such fact would not preclude the instant civil proceeding of forfeiture.<sup>4</sup>

Judgment affirmed.

Mr. Justice Musmanno dissents.

Mr. Justice Roberts files a concurring opinion.

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4. We do not, nor need we, for the reasons set forth in this opinion, pass upon the validity of the seizure of this automobile. The validity of such seizure is of no moment in this proceeding.

**CONCURRING OPINION BY ROBERTS, J.****ROBERTS, J.**

Filed: April 21, 1964

I concur fully with the opinion of the Court. However, I wish to add the following comment concerning the Liquor Code and its application to this case.

Section 602 of the Liquor Code, April 12, 1951, P. L. 90, 47 P. S. § 6-602, provides:

"(b) A copy of said petition [for forfeiture] shall be served personally on said owner if he can be found within the jurisdiction of the court, or upon the person or persons in possession at the time of the seizure thereof. Said copy shall have endorsed thereon a notice as follows:

" 'To the Claimant of Within Described Property: You are required to file an answer to this petition setting forth your title in and right to possession of said property, within fifteen (15) days from the service hereof; and you are also notified that *if you fail to file said answer, a decree of forfeiture and condemnation will be entered against said property.*' " (Emphasis supplied.)

"(d) Upon the filing of any claim for said property, setting forth a right to possession thereof, the case shall be deemed at issue and a time fixed for the hearing thereof."

Here, the uncontradicted fact is that the petition for forfeiture contained the notice to claimant in the precise statutory language and that no answer or claim was filed as required by the Code. Upon the failure to file an answer, all that the Code mandates is that a forfeiture decree

in rem be entered.<sup>1</sup> Moreover, absent the filing of a claim under subsection (d), there was no issue to be considered by the court below.<sup>2</sup>

The facts are undisputed, particularly the fact that the car was used in the illegal transportation of untaxed liquor, which may be deemed admitted on this record. In the absence of an answer to the petition or the filing of a claim of ownership pursuant to the Code, there remains only the entry of a final order of forfeiture as mandated by the Code.

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**ORDER SUR PETITION FOR REARGUMENT.**

June 30, 1964

Petition denied.

PER CURIAM.

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1. It should be noted that, as the trial court observed, "in a companion petition, the Commonwealth sought forfeiture of the liquor and wine, which was confiscated. The petition was not opposed, and forfeiture was ordered." No appeal was taken from that order.

2. Thus, it is suggested that the hearing below was unnecessary and contrary to the provisions of the Code.